

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 1979 of 2014 (O&M)

Date of decision : 9.12.2015

Ashok

.. Appellant

versus

Ajit and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Sanjay Mittal, Advocate, for the appellant.

Rajesh Bindal, J.

The appellant is before this Court against the concurrent findings of fact recorded by both the courts below, whereby the counter claim filed by him for specific performance of alleged agreement to sell dated 11.1.1970 was dismissed.

In the case in hand, respondents No.1 to 3 filed a suit for permanent and mandatory injunction seeking restrain against the present appellant from carrying out any alteration or modification in the property in dispute. In the aforesaid suit, the appellant filed a counter claim seeking specific performance of alleged agreement to sell dated 11.1.1970. The counter claim was filed on 13.6.2006. Both the courts below finding no merit in the case set up by the appellant, dismissed the counter claim, despite the fact that respondents No.1 to 3 were ex-parte, as even the suit filed by them for injunction had been dismissed in default and it was only the counter claim filed by the appellant, which was adjudicated upon by the court below. Though the learned trial court opined that the counter claim filed seeking specific performance of alleged agreement to sell dated 11.1.1970 was time barred, however, the learned lower appellate court further opined that the appellant had not been able to prove the genuineness of the agreement to sell.

Though learned counsel for the appellant sought to refer the material placed on record by him to show that the witnesses to the

agreement to sell having been expired, their family members were produced in court, who identified their signatures, however, another fact, which cannot be lost sight off is that a perusal of the alleged agreement to sell dated 11.1.1970 shows that it was a sale deed, It mentions that the vendor is owner of the property, which has been sold by him to the vendee for a total sum of ₹ 3,500/-. Even possession had been handed over and none of the LRs or relative of the vendor will have any right in the property. It could not be disputed that transfer of an immovable property worth more than ₹ 100/- is required to be registered. It is not in dispute that the alleged document dated 11.1.1970, is not registered. It is a simple writing on a plain paper. It is also not disputed that till such time respondents No.1 to 3 filed a suit for injunction, the appellant never thought of filing suit for specific performance, as even in the opinion of the appellant the alleged document was not an agreement to sell but a sale deed. It was only after respondents No. 1 to 3 filed suit for injunction that the counter claim was filed by the appellant claiming relief of specific performance.

In view of my aforesaid discussions, I do not find any merit in the present appeal. No substantial question of law arises. The appeal is accordingly, dismissed.

(Rajesh Bindal)
Judge

9.12.2015
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